

2020 JUVENILE JUSTICE VIRTUAL CONFERENCE

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JUVENILE COURT RESTITUTION: LEGAL CONSIDERATIONS FOR RESTITUTION ORDERS & ADMINISTRATIVE PROCESS UPON LOSS OF JURISDICTION

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Victim Restitution

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What is Restitution?

- Purpose (help make victim whole; not to punish)
- Economic Loss (basis for full or partial restitution award)
- Non-Economic Loss (not recoverable)

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Economic Loss A.R.S. §8-344(B)

- Verified statement of loss A.R.S. §8-344(B) (versus contested hearing in adult court A.R.S. §13-804(G))
 - Past and future medical care costs, lost earning capacity, lost wages, loss of property
 - Reasonable damages for injury to or loss of property
 - Actual medical expenses
- Costs incurred as a direct result of crime

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Non-Economic Loss (Not Recoverable)

- Pain and suffering A.R.S. §8-344(B)
- Punitive damages
- Consequential damages

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Amount of Restitution

- On request of the victim, prosecutor may assert any victim right including right to restitution. A.R.S. §8-416(C)
- Victim verified statement of losses. A.R.S. §8-344(B)
- Amount of partial or full restitution must be awarded after considering age, physical and mental condition as well as earning capacity of juvenile. A.R.S. §8-344(A) (compare to adult cases... full restitution must always be ordered A.R.S. §13-603(C))
- Court may order parents to jointly and severally make restitution to victim subject to limits of A.R.S. §12-661(B) (\$10,000 cap) by lump sum or installment payments A.R.S. §8-344(C)
- Ability to pay is not relevant to the court's consideration of parental contribution to restitution award but may be relevant to lump sum or installment payments A.R.S. §8-344(C)
- County Restitution Fund. A.R.S. §8-346(D) ("If monies are available, the victim shall be paid from monies that are credited to the juvenile for work performed.")

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Collecting Restitution

- Court retains jurisdiction until juvenile turns age 18 for purposes of modifying the manner of payment. A.R.S. §8-344(D)
- If juvenile on probation, contact probation officer to assist with collection
- Restitution lien on property A.R.S. §8-345(C)
- At age eighteen, award converts to a juvenile restitution order, non-dischargeable in bankruptcy and interest accrues at ten percent (10%) A.R.S. §8-344(D) & (F)
- Juvenile Restitution Order enforceable as any civil judgment; juvenile court no longer has jurisdiction but civil enforcement tools available
- Creative options (insurance, writ of execution, foreclosure, vehicle repo)

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Enforcement options

- If on probation, remedy... contact probation officer to request relief
- Off probation? Request assistance from juvenile court or request a hearing before juvenile turns age eighteen. A.R.S. §8-344(D) (court retains jurisdiction for purpose of modifying manner of payments) (compare to adult criminal court (A.R.S. §§13-804(M), (N), (O), 13-810, -812)
- Non-payment by parents before juvenile turns eighteen may lead to OSC for non-payment or review hearing by court
- After age eighteen, negotiate a payment plan after juvenile restitution order entered (remember to issue satisfaction of judgment

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Enforcement options (continued)

- Juvenile collection efforts via civil enforcement versus adult criminal court collection options (garnishment, petition for OSC re: contempt, etc. A.R.S. §13-810, -812, *et. seq.*)
- Civil debtor's examination
- Civil writ of garnishment of earnings/non-earnings
- Civil writ of execution (repossession/foreclosure)

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Discovery

- Income and assets
- Expenses
 - Basic obligations
 - Rent
 - Utilities (cell, cable)

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Civil Remedies A.R.S. §8-350.02

- Juvenile precluded from denying essential allegations of the criminal offense which had been adjudicated including no contest pleas
- Can allege civil damages exceeding economic loss and restitution **actually paid**
- Victim cannot recover economic losses twice
- Victim can recover general damages, consequential damages and punitive damages
- But bankruptcy discharge possible

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Fair Debt Collection Practices Act

- Fair Debt Collection Practices Act
- Restitution obligations are not “debts”

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Questions?

For further information, contact:

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Thank you

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